Single Bench

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

W.P. No. 253 /2005

PETITIONER : Jyoti Satpati, W/o Jeewan Satpati, Aged about- 30 years, At Post Navapara (A), Village- Bade Haldi, Block- Pussore, Tahsil & District- Raigarh (C.G.)

VERSUS

RESPONDENTS : 1- State of Chhattisgarh, Through : Principal, Secretary, Panchayat & Social Welfare, D.K.S. Bhawan, Raipur (C.G.).

2- State Election Commission, Through : Chief Election Officer, Raipur (C.G.).

3- District Returning Officer, Collectrate Building, Raigarh (C.G.).

4- Returning Officer, Block Office - Pussore, District – Raigarh (C.G.).

5- Assistant Returning Officer/ Authorized Officer, Polling Booth No. 100, Block – Pussore, District – Raigarh (C.G.).

6- Smt. Leelawati Gupta, W/o Shiv Prasad Gupta, Village- Navapara (A), Block – Pussore, Tahsil & District- Raigarh.

P.R. No. 285/05 Presented by Shri Rajnish Gupta dated 24.1.05

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA.

The above named petitioners humbly and respectfully begs to submit as under: -

RECEIVED-COPY 24.1.05 G. Bilaspur

(70)

XI-HC—78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक W.P. No 253/05 **सन्** 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

1-2-2005

On a mention being made, the case is taken up for hearing.

Shri Amit Sharma, counsel for the petitioner.

Shri V.V.S. Murthy, Deputy Advocate General for the respondents No.1 to 5.,

Shri B.D. Guru, counsel for respondent No.6.

Heard.

As return has already been filed on behalf of respondents No.2 to 5 and return has also been filed on behalf of respondent No.6, therefore, arguments heard for final disposal of this writ petition at the admission stage itself.

By this writ petition the petitioner has questioned the declaration of the election result in respect of the post of Sarpanch of Gram Panchayat Nawapara-A, Block Pussore, District Raigarh whereby respondent No.6 has been declared elected as Sarpanch of the said Panchayat.

The case of the petitioner is that the election for the post of Sarpanch of Gram Panchayat Nawapara-A, block Pussore, District Raigarh was held on 15th January 2005 in which she along with respondent No.6 and one Vinodini contested the said election. After voting was over, on the same day, counting of the votes were taken up and it was announced that the petitioner herein has secured 302 valid

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक W.P. 253 **सन्** 2005

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

votes whereas, respondent No.6 has secured 303 valid votes. On coming to know this, the petitioner moved an application for recounting of the votes as per Rule 80 of the Panchayat Nirvachan Niyam, 1995 (hereinafter referred to as 'Niyam') and the application of the petitioner was allowed and votes were recounted. Thereafter, the returning officer issued counting slip Annexure -P/2 in respect of polling station No.99 and Annexure-P/3 in respect of polling station No.100, as a result of which the petitioner secured 305 votes. When the petitioner went next day to the block office for obtaining certificate, the returning officer informed the petitioner that respondent No.6 has been elected as Sarpanch. On coming to know this, the petitioner approached the District Election Officer and made a complaint that returning officer of Block Pussore has announced wrong result, therefore, same may be corrected. An application in this respect Annexure-P/4 was moved by the petitioner and the result which was announced by the returning officer in favour of the petitioner was also appeared in the news paper. Cutting of which is Annexure-P/5. The returnjng officer without informing the petitioner on her back again changed the result and prepared final result Annexure-P/3 in which the petitioner was shown defeated by one vote to the respondent No.6 which was done on the back of the

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश — 3 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	petitioner, as such by writ of mandamus the respondents be directed to correct the election result as per rule 84 of Niyam. As per reply of respondents No.2 to 5, the petitioner has secured only 103 votes at the polling station No.100 whereas, respondent No.6 has secured 182 votes. As the presiding officer who was supervising the counting was influenced by the petitioner's persons and under the threat the presiding officer issued the counting slip in which 106 votes were shown to be cast in favour of the petitioner, the matter was reported to the Assistant Election Officer Vikaskhand Pussore, copy of the same was forwarded to the District Election Officer and the matter was also reported to the Police Station. Thereafter, the concerned returning officer Pussore prepared a tabulation list regarding vote exercised by the people for polling station Nos.99 and 100 and thereafter, the form No.17 was prepared. As per Form No.17, 737 voters cast their votes and out of that, 36 votes were invalid and remaining 701 votes were found to be valid. As per the tabulation list the petitioner secured 302 votes whereas, respondent No.6 secured 303 votes. The petitioner lost the election by margin of one vote and thereafter a certificate of winning candidate was issued. Same fact is evident from the documents Annexures-R/1 to R/8. Similar return has been filed on behalf of respondent No.6.	

GR. PRJ—FS/350—12/2000—50,000.

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मामला क्रमांक WP-253 **सन्** 2005

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश — 4 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	Perusal of the above facts as mentioned by the petitioner in the petition and the respondents in their return shows that disputed facts are involved in this matter. As per the respondents' return the petitioner had secured counting slip showing 106 votes in her favour regarding election booth No.100 from the presiding officer under threat by her persons and report to that effect was lodged whereas, correct position was that the petitioner secured only 103 votes, therefore, the two contradictory stand taken by the parties can be resolved only by allowing the parties to adduce the evidence which cannot be done in this writ jurisdiction. As the disputed facts are involved in this matter, which cannot be resolved in the writ jurisdiction, as such the writ petition is not maintainable. However, the petitioner is at liberty to avail remedy whichever available to her under the election law. With the aforesaid observation, the petition stands dismissed. Consequently, M.(W.)P. No.216/2005 and I.A. No.676/2005 stand disposed of. **Sd/-** **L.C. Bhadoo** **Judge**	

Barve

GL PRJ—FS/350—12/2000—50,000.